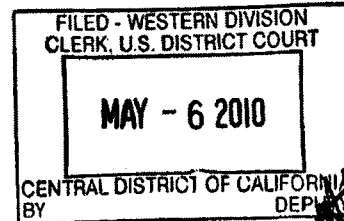


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CENTRAL DISTRICT OF CALIFORNIA
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SABENA LAKSHMI KAMMULA,
individually and on behalf of all others
similarly situated; MICHELLE WEEKS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KELLOGG COMPANY, a Delaware
Corporation; KELLOGG USA, INC., a
Michigan Corporation; KELLOGG
SALES COMPANY, a Delaware
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CV09-08102 (MMM) (RZx)
Before the Hon. Margaret M. Morrow

**PROPOSED SECOND AMENDED
CLASS ACTION COMPLAINT**

1. UNFAIR BUSINESS PRACTICES
IN VIOLATION OF BUSINESS
AND PROFESSIONS CODE §
17200, *et seq.*
2. FALSE AND MISLEADING
ADVERTISING IN VIOLATION
OF BUSINESS AND
PROFESSIONS CODE § 17500, *et
seq.*
3. VIOLATION OF CALIFORNIA
CIVIL CODE § 1750, *et seq.*
(Consumers Legal Remedies Act)

DEMAND FOR JURY TRIAL

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1 Plaintiff Michelle Weeks ("Plaintiff"), individually and on behalf of all other
2 similarly situated purchasers of Kellogg Company's Cocoa Krispies (the "Cocoa
3 Krispies Class") and Rice Krispies ("Rice Krispies Class") (collectively referred to as
4 "the Class"), brings this complaint against Kellogg Company, a Delaware corporation,
5 Kellogg USA, Inc., a Michigan corporation, Kellogg Sales Company, a Delaware
6 corporation (collectively "Kellogg") and Does 1 through 100, inclusive (collectively
7 referred to herein as "Defendants") and allege as follows:

8 9 JURISDICTION

10 1. This Court has subject matter jurisdiction pursuant to the Class Action
11 Fairness Act ("CAFA"), codified in part 28 U.S.C. §§ 1332(d) and 1453.
12 Jurisdiction under CAFA is met because: (1) the proposed number of putative class
13 members exceeds 100; (2) at least one plaintiff and one defendant are citizens of
14 different states, and in some instances, the principal defendant is not a citizen of the
15 forum state; and (3) the amount in controversy, including, but not limited to the
16 aggregate amount of relief sought by absent class members, exceeds \$5 million. 28
17 U.S.C. § 1332(d)(2).

18 19 VENUE

20 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2)
21 because events giving rise to the claims, including, *inter alia*, Kellogg's false and
22 misleading advertising and marketing, occurred and arose in this District.

23 24 NATURE OF THE ACTION

25 3. Defendants made and continue to make false and misleading statements
26 in their advertising and packaging of Kellogg's Cocoa Krispies (hereinafter "Cocoa
27 Krispies") and Kellogg's Rice Krispies (hereinafter "Rice Krispies") (collectively
28 referred to as "the Products" or "Krispies cereals"). Cocoa Krispies is a

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1 “chocolatey, sweetened rice cereal” packaged and marketed by Defendants. Rice
 2 Krispies is “a toasted rice cereal” packaged and marketed by Defendants.

3 4. According to Defendants’ uniform and consistent claims, eating just
 4 three-quarters ($\frac{3}{4}$) cup of Cocoa Krispies will boost a family’s immunity.
 5 Defendants’ uniform and consistent claims also state that eating just one and a
 6 quarter ($1\frac{1}{4}$) cups of Rice Krispies will boost a family’s immunity. Specifically,
 7 Defendants market and advertise that both Krispies cereal products “NOW HELP
 8 SUPPORT YOUR CHILD’S IMMUNITY.” Defendants, through a variety of
 9 advertising, including but not limited to print, internet, and the packaging and
 10 labeling of the Krispies cereals, make false regarding the benefits of the Krispies
 11 cereals, including but not limited to the following:

12 a. FRONT LABEL OF PRODUCTS:

- 13 • “NOW HELPS SUPPORT YOUR CHILD’S IMMUNITY”
- 14 • “25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS
- 15 VITAMINS A, B, C & E”

16 b. BACK LABEL OF PRODUCTS:

- 17 • “WITH ANTIOXIDANTS AND NUTRIENTS”
- 18 • “Helping to support your family’s IMMUNITY”
- 19 • “Kellogg’s Cocoa Krispies has been improved to include antioxidants
- 20 and nutrients that your family needs to help them stay healthy.”
- 21 • “Excellent source of vitamins A, B, C, and E – antioxidants and
- 22 nutrients that help support the body’s immune system”
- 23 • “Enjoy this wholesome breakfast and help keep your family healthy.”

24 c. INTERNET:

- 25 • “And now each and every box is fortified with vitamins and nutrients
- 26 that work together to help support your child’s immunity.”

27 //

28 //

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1 5. These consistent and uniform claims are false. Indeed, there is no
 2 known clinical study that adequately supports Defendants' claims. Plaintiff
 3 therefore brings this class action to secure, among other things, injunctive relief,
 4 restitution and actual damages for the Class against Defendants for false and
 5 misleading advertising in violation of CAL. BUS. & PROF. CODE § 17200, *et seq.*
 6 (2009), CAL. BUS. & PROF. CODE § 17500, *et seq.* (2009), and CAL. CIV. CODE §
 7 1750, *et seq.* (2009), among other laws.

8 6. Additionally, Defendants fail to adequately disclose that other
 9 ingredients, including but not limited to sugar and high-fructose corn syrup, effect
 10 their claim that the Krispies cereals "help support" a child's immunity. Defendants
 11 also fail to adequately disclose whether inclusion of such ingredients may outweigh
 12 the benefits, and thus render the "immunity" claims false and/or misleading.

13 7. Defendants further failed and continue to fail to adequately disclose
 14 whether the "antioxidants and nutrients" purportedly added to the box, in
 15 conjunction with such sugary and unhealthy ingredients, negates or otherwise
 16 decreases the so-called health and immunity benefits Defendants claim.

17 8. Defendants also failed and continue to fail to adequately disclose
 18 whether "antioxidants and nutrients" are synthetic and/or unnatural in form, and
 19 whether the form used actually procures the benefits claimed by Defendants.

20 9. Accordingly, Defendants' advertising of the Krispies cereals, including
 21 but not limited to print, packaging and internet advertising, conveys a single,
 22 consistent false and misleading message to consumers: that Defendants' Krispies
 23 cereals will boost a family's immune systems of children and keep a family healthy.
 24 This is particularly egregious, especially in light of the current H1N1 flu ('swine
 25 flu') epidemic in California and the rest of the nation.

26 10. During the course of this deception, Defendants have sold hundreds of
 27 thousands of units of the Krispies cereals based upon the false promises and
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1 misleading advertisements targeted at vulnerable and worried parents, children
2 and/or those individuals desiring to boost their immune systems.

3 11. Plaintiff and the Class have suffered injury in fact and have lost money
4 as a result of Defendants' false misrepresentations. Plaintiff purchased Cocoa
5 Krispies and Rice Krispies because of the claims by Defendants that these Krispies
6 cereals each contain twenty-five percent (25%) daily value of antioxidants and
7 nutrients and would support her and her family's immune system, among other
8 claims. Plaintiff would not have purchased the Product if she had known that this
9 advertising was false.

10 12. Defendants' false and misleading statements should be enjoined in the
11 face of scientific and other evidence that undercuts Defendants' claims of each of
12 the Krispies cereals' ability to support a family's immune system. In addition,
13 Defendants should be compelled to provide restitution to those innocent consumers
14 that Defendants duped into purchasing Cocoa Krispies cereal.

15 PARTIES

16 13. Plaintiff is, and at all times relevant hereto was, an individual residing
17 in Ventura County, California. Plaintiff purchased both Cocoa Krispies and Rice
18 Krispies in Ventura County. In doing so, Plaintiff relied upon the advertising and
19 other promotional material which were prepared and approved by Defendants and
20 their agents and disseminated through their packaging, label, and national
21 advertising media, containing the misrepresentations alleged herein and designed to
22 encourage consumers to purchase Cocoa Krispies and Rice Krispies.

23 14. Defendant Kellogg Company is a corporation organized under the laws
24 of the State of Delaware. Kellogg Company is the world's leading producer of
25 cereal. According to its 2007 filing with the United State Securities and Exchange
26 Commission, Kellogg Company had nearly \$12,000,000,000 in sales in 2007.
27 Kellogg Company maintains its principal business office at One Kellogg Square,
28

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1 P.O. Box 3599, Battle Creek, Michigan 49016-3599. Kellogg Company, directly
2 and through its agents, has substantial contacts with and receives benefits and
3 income from and through the State of California. Kellogg USA Inc. and Kellogg
4 Sales Company operate as wholly-owned subsidiaries of Kellogg Company. As
5 such, Kellogg Company is the owner, manufacturer and distributor of the Cocoa
6 Krispies and Rice Krispies products, and is the company that created and/or
7 authorized the false, misleading and deceptive advertisements and/or packaging for
8 the Cocoa Krispies and Rice Krispies.

9 15. Defendant Kellogg USA, Inc. is a corporation organized under the laws
10 of the State of Michigan. Kellogg USA, Inc. maintains its principal business office
11 at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016-3599.
12 Kellogg USA, Inc., directly and through its agents, has substantial contacts with
13 and receives benefits and income from and through the State of California. Kellogg
14 USA, Inc., is the owner, manufacturer and distributor of the Cocoa Krispies and
15 Rice Krispies products, and/or is the company that created and/or authorized the
16 false, misleading and deceptive advertisements and/or packaging for Cocoa Krispies
17 and Rice Krispies.

18 16. Defendant Kellogg Sales Company is a corporation organized under the
19 laws of the State of Delaware. Kellogg Sales Company maintains its principal
20 business office at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan
21 49016-3599. Kellogg Sales Company, directly and through its agents, has
22 substantial contacts with and receives benefits and income from and through the
23 State of California. Kellogg Sales Company, is the owner, manufacturer and
24 distributor of the Cocoa Krispies and Rice Krispies products, and/or is the company
25 that created and/or authorized the false, misleading and deceptive advertisements
26 and/or packaging for the Cocoa Krispies and Rice Krispies products.

27 17. The true names and capacities, whether individual, corporate,
28 associated or otherwise of certain manufacturers, distributors, or their alter egos

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1 sued herein as DOES 1 through 100 inclusive are presently unknown to Plaintiff
2 who therefore sue these Defendants by fictitious names. Plaintiff will seek leave of
3 this Court to amend the Complaint to show their true names and capacities when the
4 same have been ascertained. Plaintiff is informed and believes and based thereon
5 alleges that DOES 1 through 100 were authorized to do and did business in Los
6 Angeles County. Plaintiff is further informed and believes and based thereon
7 alleges that DOES 1 through 100 were or are, in some manner or way, responsible
8 for and liable to Plaintiff for the events, happenings, and damages hereinafter set
9 forth below.

10 18. Plaintiff is informed and believes and based thereon alleges that at all
11 times relevant herein each of the Defendants was the agent, servant, employee,
12 subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other
13 representative of each of the remaining Defendants and was acting in such capacity
14 in doing the things herein complained of and alleged.

15 19. In committing the wrongful acts alleged herein, Defendants planned
16 and participated in and furthered a common scheme by means of false, misleading,
17 deceptive, and fraudulent representations to induce members of the public to
18 purchase Cocoa Krispies and Rice Krispies. Defendants participated in the making
19 of such representations in that each did disseminate or cause to be disseminated said
20 misrepresentations.

21 20. Defendants, upon becoming involved with the manufacture,
22 distribution, advertising, marketing, and sale of Cocoa Krispies and Rice Krispies
23 knew or should have known that the claims about these Krispies cereals and, in
24 particular, the claims suggesting that Cocoa Krispies and Rice Krispies each "NOW
25 HELPS SUPPORT YOUR CHILD'S IMMUNITY" and includes antioxidants and
26 nutrients that a family needs to help them stay healthy were and are false, deceptive,
27 and misleading. Indeed, since the first time that Cocoa Krispies and Rice Krispies
28 were advertised, Defendants have been aware that they, individually and/or

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1 collectively, do not possess the requisite competent and reliable scientific evidence
 2 to substantiate their bold claims about the purported benefits and effects of each of
 3 the Krispies cereals. Defendants affirmatively misrepresented the “benefits” of
 4 each of the Krispies cereals in order to convince the public to purchase and use that
 5 product, resulting in profits of hundreds of thousands of dollars or more to
 6 Defendants, all to the damage and detriment of the consuming public. Thus, in
 7 addition to the wrongful conduct herein alleged as giving rise to primary liability,
 8 Defendants further aided and abetted and knowingly assisted each other in breach of
 9 their respective duties and obligations as herein alleged.

11 FACTUAL ALLEGATIONS

12 21. With the ever-increasing health concerns and scientific revelations
 13 regarding the nutritional content of food, the marketing of food as healthy has
 14 exploded in recent years. In an effort to “grab” some of those billions,
 15 unscrupulous companies routinely toss a small amount of a particular substance into
 16 a preexisting product and advertise said product as though it could provide results
 17 beyond what would be a reasonable expectation. Often such substances contribute
 18 no scientifically proven health benefits or contain dosages that are so small in
 19 proportion to that recommended for daily intake as to make any real benefit
 20 illusory.

21 22. These marketing companies engage in campaigns that suggest to health
 22 conscious consumers that a particular product will “SUPPORT YOUR CHILD’S
 23 IMMUNITY” and keep the consumer’s family healthy, while, in fact, what the
 24 product provides is either not what it purports to be, has not been generally accepted
 25 within the scientific community, or is otherwise far too minimal to be adequate, let
 26 alone profound.

27 23. In their marketing of Cocoa Krispies and Rice Krispies, Defendants
 28 have “followed the playbook” to the letter. Defendants’ television commercials,

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1 websites (<http://www.ricekrispies.com/products/cocoa-krispies-cereal.aspx> [for
 2 Cocoa Krispies] and <http://www.ricekrispies.com/products/rice-krispies-cereal.aspx>
 3 [for Rice Krispies], last viewed November 4, 2009) and the Krispies cereals'
 4 packaging and labeling reiterate those very same claims, and state:

5 a. FRONT LABEL OF PRODUCTS:

- 6 • "NOW HELPS SUPPORT YOUR CHILD'S IMMUNITY"
- 7 • "25% DAILY VALUE OF ANTIOXIDANTS & NUTRIENTS"
- 8 • "VITAMINS A, B, C & E"

9 b. BACK LABEL OF PRODUCTS:

- 10 • "WITH ANTIOXIDANTS AND NUTRIENTS"
- 11 • "Helping to support your family's IMMUNITY"
- 12 • "Kellogg's Cocoa Krispies has been improved to include antioxidants
 13 and nutrients that your family needs to help them stay healthy."
- 14 • "Excellent source of vitamins A, B, C, and E – antioxidants and
 15 nutrients that help support the body's immune system"
- 16 • "Enjoy this wholesome breakfast and help keep your family healthy."

17 c. INTERNET:

- 18 • And now each and every box is fortified with vitamins and nutrients
 19 that work together to help support your child's immunity.

20
 21
 22 24. Defendants' claims about Cocoa Krispies and Rice Krispies lead
 23 parents to believe that the antioxidants and nutrients contained therein will have the
 24 tangible result of helping to support their child's immunity. These claims are false,
 25 deceptive, and misleading. Defendants do not have competent and reliable
 26 scientific evidence to support their claims about Cocoa Krispies and Rice Krispies.
 27 Indeed, Kellogg does not cite to a single clinical trial or study it has conducted or
 28 commissioned on the benefits of Krispies cereals because, presumably, Kellogg has

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1 not conducted or commissioned any. A true and correct copy of the front and back
 2 of the Cocoa Krispies packaging is attached hereto as **Exhibit "1"** and **Exhibit "2"**,
 3 respectively. A true and correct copy of the front and back of the Rice Krispies
 4 packaging is attached hereto as **Exhibit "3"** and **Exhibit "4"**, respectively.

5 25. In spite of its lack of competent and reliable scientific evidence to
 6 support its claims about Cocoa Krispies and Rice Krispies, Kellogg has introduced
 7 products including but not limited to Krispies cereals into the marketplace to profit
 8 from a growing trend in the manufacturing, advertising, and sales of "functional"
 9 foods. Kellogg has prioritized profits ahead of its customers by altogether failing to
 10 conduct or commission any clinical trials or studies whatsoever concerning the
 11 benefits and risks of Krispies cereals.

12 26. Contrary to its consistent and uniform claims, Defendants fail to
 13 adequately disclose that other ingredients, including but not limited to sugar,
 14 chocolate, high-fructose corn syrup and/or partially-hydrogenated oils, may not
 15 "help support" a child's immunity. Defendants also fail to adequately disclose
 16 whether inclusion of such ingredients may outweigh the benefits, and thus render
 17 the "immunity" claims false and/or misleading.

18 27. Defendants further failed and continue to fail to adequately disclose
 19 whether the form and/or amount of the "antioxidants and nutrients" purportedly
 20 added to the box may not render the health benefits Defendants claim.

21 28. Defendants' claims about Cocoa Krispies and Rice Krispies lead
 22 parents and those seeking to boost their immune systems, to believe that the
 23 "dosage" of antioxidants and nutrients contained therein will have the tangible
 24 result of helping to support their child's immunity. These claims are false,
 25 deceptive, and misleading. Defendants do not have competent and reliable
 26 scientific evidence to support such claims.

27 29. During the course of their false, misleading, and deceptive advertising
 28 campaign, Defendants have sold hundreds of thousands of units or more of Cocoa

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1 Krispies and Rice Krispies based upon Defendants' false promises. Plaintiff and the
2 Class have suffered injury in fact and have lost money as a result of Defendants'
3 false representations. The Products, as purchased by the Plaintiff and the Class,
4 were and are unsatisfactory and worth less than the amount paid for.

5 30. Plaintiff would not have purchased the Products, but for Defendants'
6 representations that consuming the Products would boost her and her family's
7 immunity.

8 31. Through the conduct described herein, Defendants have received
9 money belonging to Plaintiffs and the Class through the sale of the Products.

10 32. Defendants have reaped substantial profit by misrepresenting the facts
11 regarding their Products, as set forth herein. Defendants have benefited from the
12 receipt of such money that they would not have received but for their
13 misrepresentations and/or omissions.

14 33. As a direct and proximate result of Defendants' misconduct as set forth
15 herein, Defendants have been unjustly enriched.

16 34. Under principles of equity and good conscience, Defendants should not
17 be permitted to keep the money belonging to Plaintiffs and the Class that
18 Defendants have unjustly received as a result of their actions.

19 **CLASS ACTION ALLEGATIONS**

20 35. Plaintiff brings this action on behalf of herself and the proposed
21 plaintiff Class members under Federal Rule of Civil Procedure Rule 23(b)(2) and
22 (b)(3). The proposed Cocoa Krispies Class consists of:

23 All persons residing in the State of California who purchased Cocoa
24 Krispies for personal use and not for resale during the time period
25 November 4, 2005 through the present. Excluded from the Class are
26 Kellogg's officers, directors, and employees, and any individual who
27 received remuneration from Kellogg in connection with that
28 individual's use or endorsement of Cocoa Krispies Immunity.

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1 36. The proposed Rice Krispies Class consists of:

2 All persons residing in the State of California who purchased Rice
 3 Krispies for personal use and not for resale during the time period
 4 November 4, 2005 through the present. Excluded from the Class are
 5 Kellogg's officers, directors, and employees, and any individual who
 6 received remuneration from Kellogg in connection with that
 7 individual's use or endorsement of Rice Krispies Immunity.
 8

9 Said definitions of the Cocoa Krispies Class and/or Rice Krispies Class may be
 10 further defined or amended by additional pleadings, evidentiary hearings, a class
 11 certification hearing, and orders of this Court. The Cocoa Krispies Class and Rice
 12 Krispies Class shall both be collectively referred to as "the Class" for purposes of
 13 this Complaint.

14 37. The Class comprises many thousands of persons throughout California,
 15 the joinder of whom is impracticable, and the disposition of their claims in a class
 16 action will benefit the parties and the Court. The Class is sufficiently numerous
 17 because millions of units of Cocoa Krispies and Rice Krispies have been sold in the
 18 State of California during the Class Period.

19 38. There is a well-defined community of interest in the questions of law
 20 and fact involved affecting the parties to be represented. The questions of law and
 21 fact common to the Class predominate over questions which may affect individual
 22 Class members. Common questions of law and fact include, but are not limited to,
 23 the following:

- 24 a. Whether Defendants' conduct is an unlawful business act or practice
- 25 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 26 b. Whether Defendants' conduct is a fraudulent business act or practice
- 27 within the meaning of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 28

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- c. Whether Defendants' advertising is untrue or misleading within the meaning of CAL. BUS. & PROF. CODE § 17500, *et seq.*;
- d. Whether Defendants possess competent and reliable scientific evidence to support their label and advertising claims made regarding the Products;
- e. Whether Defendants made false and misleading representations in their advertising and labeling of the Products;
- f. Whether Defendants failed to disclose that the Products may not actually boost consumers' immunity;
- g. Whether Defendants knew or should have known that the representations and omissions were false;
- h. Whether Defendants' misrepresentations and omissions were likely to deceive a reasonable consumer;
- i. Whether Defendants represented that the Products were of a particular standard, quality, or grade when they are of another; and
- j. Whether Defendants represented that the Products have characteristics, benefits, uses, or quantities which it does not have.

39. Plaintiff's claims are typical of the claims of the Class, and Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff does not have any interests which are antagonistic to those of the proposed Class. Plaintiff has retained competent and experienced counsel in class action and other complex litigation. The questions of law and fact common to the Class members, some of which are set out above, predominate over any questions affecting only individual Class members.

40. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' false, deceptive, and misleading representations.

41. The Product as purchased by the Plaintiff and the Class was and is unsatisfactory and worth less than the amount paid for.

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1 42. The Class is identifiable and readily ascertainable. The names and
2 addresses of the class members are available through business or public records.
3 Notice can be provided to such purchasers via first class mail using techniques and
4 a form of notice similar to those customarily used in class actions, and by internet
5 publication, radio, newspapers, and magazines.

6 43. A class action is superior to other available methods for fair and
7 efficient adjudication of this controversy. The expense and burden of individual
8 litigation would make it impracticable or impossible for proposed members of the
9 Class to prosecute their claims individually.

10 44. The trial and the litigation of Plaintiff's claims are manageable.
11 Individual litigation of the legal and factual issues raised by Defendants' conduct
12 would increase delay and expense to all parties and the court system. The class
13 action device presents far fewer management difficulties and provides the benefits
14 of a single, uniform adjudication, economies of scale, and comprehensive
15 supervision by a single court.

16 45. Defendants have acted on grounds generally applicable to the entire
17 Class, thereby making final injunctive relief or corresponding declaratory relief
18 appropriate with respect to the Class as a whole. The prosecution of separate
19 actions by individual Class members would create the risk of inconsistent or
20 varying adjudications with respect to individual member of the Class that would
21 establish incompatible standards of conduct for Defendants.

22 46. Absent a class action, Defendants will likely retain the benefits of their
23 wrongdoing. Because of the small size of the individual Class members' claims,
24 few, if any, Class members could afford to seek legal redress for the wrongs
25 complained of herein. Absent a representative action, the Class members will
26 continue to suffer losses and Defendants will be allowed to continue these
27 violations of law and to retain the proceeds of their ill-gotten gains.
28

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FIRST CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, et seq.

(By Plaintiff and each Class Against All Defendants)

47. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporates the same as if set forth herein at length.

48. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE § 17200, *et seq.*, on behalf of Plaintiff and a Class consisting of all persons residing in the State of California who purchased Cocoa Krispies and/or Rice Krispies for personal use and not for resale.

49. Defendants, in their advertising and packaging of Cocoa Krispies and/or Rice Krispies, made and continue to make false and misleading statements regarding the benefits and the efficacy of Cocoa Krispies and/or Rice Krispies, particularly as they apply to supporting a child's immunity and helping to keep family members healthy, all as set forth in the examples above.

50. Defendants do not have any competent or reliable scientific evidence to support the claims about Cocoa Krispies and/or Rice Krispies made in Defendants' advertising and on Defendants' packaging and labels.

51. Defendants are aware that the claims that they make about Cocoa Krispies and/or Rice Krispies are false, misleading, and unsubstantiated.

52. As alleged in the preceding paragraphs, the misrepresentations by Defendants of the material facts detailed above constitute an unfair, unlawful, and fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE § 17200.

53. In addition, Defendants' use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise which are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue, or misleading advertising, and an unlawful business practice

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1 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which
2 advertisements have deceived and are likely to deceive the consuming public, in
3 violation of CAL. BUS. & PROF. CODE §§ 17200 and 17500.

4 54. There were reasonably available alternatives to further Defendants'
5 legitimate business interests, other than the conduct described herein.

6 55. All of the conduct alleged herein occurs and continues to occur in
7 Defendants' business. Defendants' wrongful conduct is part of a pattern or
8 generalized course of conduct repeated on thousands of occasions daily.

9 56. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and
10 the members of the Class seek an order of this Court enjoining Defendants from
11 continuing to engage, use, or employ their practice of advertising the sale and use of
12 Cocoa Krispies and/or Rice Krispies. Likewise, Plaintiff and the members of the
13 Class seek an order requiring Defendants to disclose such misrepresentations, and
14 additionally request an order awarding Plaintiff and the Class restitution of the
15 money wrongfully acquired by Defendants by means of responsibility attached to
16 Defendants' failure to disclose the existence and significance of said
17 misrepresentations.

18 57. Plaintiff and the Class have suffered injury in fact and have lost money
19 or property as a result of Defendants' false representations. The Products as
20 purchased by the Plaintiff and the Class were and are unsatisfactory and worth less
21 than the amount paid for.

22 **SECOND CAUSE OF ACTION**

23 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS**

24 **AND PROFESSIONS CODE § 17500, et seq.**

25 **(By Plaintiff and each Class Against All Defendants)**

26 58. Plaintiff repeats and re-alleges the allegations set forth in the preceding
27 paragraphs and incorporates the same as if set forth herein at length.
28

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1 59. This cause of action is brought pursuant to CAL. BUS. & PROF. CODE §
2 17500, *et seq.*, on behalf of Plaintiff and the Class consisting of all persons residing
3 in the State of California who purchased Cocoa Krispies and/or Rice Krispies for
4 personal use and not for resale.

5 60. In its advertising of Cocoa Krispies and/or Rice Krispies, Defendants
6 knowingly make false and misleading statements regarding the benefits and the
7 effects of Cocoa Krispies and Rice Krispies, particularly as they apply to supporting
8 a child's immunity and helping to keep family members healthy, all as set forth in
9 the examples above.

10 61. Defendants do not have any competent and reliable scientific evidence
11 to support the claims about Cocoa Krispies and/or Rice Krispies made in
12 Defendants' advertising and on the packaging and labels of the Products.

13 62. Defendants are aware and knew that the claims that they make about
14 Cocoa Krispies and Rice Krispies are false, misleading, and unsubstantiated.

15 63. As alleged in the preceding paragraphs, the misrepresentations by
16 Defendants of the material facts detailed above constitutes an unfair, unlawful, and
17 fraudulent business practice within the meaning of CAL. BUS. & PROF. CODE §
18 17200.

19 64. In addition, Defendants' use of various forms of advertising media to
20 advertise, call attention to or give publicity to the sale of goods or merchandise
21 which are not as represented in any manner constitutes unfair competition, unfair,
22 deceptive, untrue, or misleading advertising, and an unlawful business practice
23 within the meaning of CAL. BUS. & PROF. CODE §§ 17531 and 17200, which
24 advertisements have deceived and are likely to deceive the consuming public, in
25 violation of CAL. BUS. & PROF. CODE § 17500.

26 65. Pursuant to CAL. BUS. & PROF. CODE §§ 17203 and 17535, Plaintiff and
27 the members of the Class seek an order of this Court enjoining Defendants from
28 continuing to engage, use, or employ their practice of advertising the sale and use of

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1 Cocoa Krispies and/or Rice Krispies. Likewise, Plaintiff and the members of the
2 Class seek an order requiring Defendants to disclose such misrepresentations, and
3 additionally request an order awarding Plaintiff and the Class restitution of the
4 money wrongfully acquired by Defendants by means of responsibility attached to
5 Defendants' failure to disclose the existence and significance of said
6 misrepresentations.

7 66. Plaintiff and the Class have suffered injury in fact and have lost money
8 or property as a result of Defendants' false representations. The Product as
9 purchased by the Plaintiff and the Class was and is unsatisfactory and worth less
10 than the amount paid for.

11 **THIRD CAUSE OF ACTION**

12 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

13 **(By Plaintiff and each Class against all Defendants)**

14 67. Plaintiff repeats and realleges the allegations set forth in the preceding
15 paragraphs and incorporates the same as if set forth herein at length.

16 68. This cause of action is brought pursuant to CAL. CIV. CODE § 1750, *et*
17 *seq.*, the CLRA, on behalf of Plaintiff and a Class consisting of all persons residing
18 in the State of California who purchased Cocoa Krispies and/or Rice Krispies for
19 personal use and not for resale.

20 69. The Class consists of thousands of persons, the joinder of whom is
21 impracticable.

22 70. There are questions of law and fact common to the class. These
23 questions are substantially similar and predominate over questions affecting the
24 individual members, including but not limited to: (a) Whether Defendants
25 represented that Cocoa Krispies and/or Rice Krispies have characteristics, benefits,
26 uses, or quantities which they do not have; (b) Whether the existence, extent, and
27 significance of the major misrepresentations and/or omissions regarding the
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1 purported benefits, characteristics, and efficacy of Cocoa Krispies and/or Rice
 2 Krispies violate the Act; and (c) Whether Defendants knew of the existence of these
 3 misrepresentations and omissions.

4 71. The policies, acts, and practices heretofore described were intended to
 5 result in the sale of Cocoa Krispies and Rice Krispies to the consuming public,
 6 particularly those concerned about boosting their immunity and that of their
 7 children, and violated and continue to violate CAL. CIV. CODE § 1770(a)(5) by
 8 representing that Cocoa Krispies and Rice Krispies has characteristics, benefits,
 9 uses, or quantities which it does not have.

10 72. The policies, acts, and practices heretofore described were intended to
 11 result in the sale of Cocoa Krispies and Rice Krispies to the consuming public,
 12 particularly those concerned about boosting their immunity and that of their
 13 children, and violated and continue to violate CAL. CIV. CODE § 1770(a)(7) by
 14 representing that Cocoa Krispies and Rice Krispies is of a particular standard,
 15 quality, or grade, or that Cocoa Krispies and Rice Krispies is of a particular style or
 16 model, when they are of another.

17 73. Defendants fraudulently deceived Plaintiff and the Class by
 18 representing that Cocoa Krispies and Rice Krispies have certain characteristics,
 19 benefits, uses, and qualities which they do not have. In doing so, Defendants
 20 intentionally misrepresented and concealed material facts from Plaintiff and the
 21 Class, specifically, that Cocoa Krispies and Rice Krispies each helps to support a
 22 person's immunity and keep them healthy. Said misrepresentation and concealment
 23 were done with the intention of deceiving Plaintiff and the Class and depriving them
 24 of their legal rights and money.

25 74. Defendants knew that the dosage and form of antioxidants and nutrients
 26 in Cocoa Krispies and Rice Krispies are not scientifically proven to substantially
 27 help to support the body's immune system.

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1 75. Defendants' actions as described herein above were done with
2 conscious disregard of Plaintiff's rights and Defendants were wanton and malicious
3 in their concealment of same.

4 76. Plaintiff and the Class have suffered injury in fact and have lost or
5 property as a result of Defendants' false representations.

6 77. The Product as purchased by the Plaintiff and the Class was and is
7 unsatisfactory and worth less than the amount paid for.

8 78. Pursuant to CAL. CIV. CODE § 1780(a), Plaintiff seeks injunctive relief
9 to enjoin the above-described wrongful acts and practices of Defendants, including,
10 but not limited to, an order:

- 11 A. Enjoining Defendants from continuing to make the statements set
12 forth above;
- 13 B. Enjoining Defendants from continuing to offer for sale any unit
14 of Cocoa Krispies and Rice Krispies that contains any false,
15 misleading and/or unsubstantiated statements and claims on their
16 packaging and/or their labels, including, without limitation, those
17 statements and claims set forth above;
- 18 C. Ordering that Defendants immediately recall any and all units of
19 Cocoa Krispies and/or Rice Krispies that contain any false,
20 misleading and/or unsubstantiated statements and claims on them
21 and/or their labels, including, without limitation, those statements
22 and claims set forth above;
- 23 D. Enjoining Defendants from continuing to use the packaging and
24 label that they presently use for Cocoa Krispies and Rice
25 Krispies; and
- 26 E. Enjoining Defendants from distributing such false advertising
27 and misrepresentations.

28 79. In accordance with Section 1782 of the CLRA, on or about November

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1 4, 2009 Plaintiff notified Defendants in writing of the particular violations of
2 Section 1770 of the CLRA (the Notices) and demanded, among other things, that
3 Defendants cease making the misrepresentations and omissions alleged herein, and
4 that Defendants provide restitution to consumers who purchased the Products.
5 Plaintiff sent the Notices by means of certified mail, return-receipt requested, to
6 Defendants at their principal places of business as well as Defendants' agents for
7 service of process, as listed by the California Secretary of State. Since Defendants
8 failed to respond to Plaintiff's demands within thirty days of receipt of the Notice,
9 pursuant to section 1782(a) and (d) of the CLRA, Plaintiff hereby amends the
10 Complaint to request statutory damages, actual damages, plus punitive damages,
11 interest and attorney's fees. Plaintiff requests that this Court enter such orders or
12 judgments as may be necessary to restore any person in interest any money which
13 may have been acquired by means of such unfair business practices, and for such
14 relief as provided in CAL. CIV. CODE § 1780 and the Prayer for Relief.

15 80. Plaintiff requests that this Court enter such orders or judgments as may
16 be necessary to restore any person in interest any money which may have been
17 acquired by means of such unfair business practices, and for such relief as provided
18 in CAL. CIV. CODE § 1780(a) and the Prayer for Relief.

19 81. Plaintiffs shall be irreparably harmed if such an order is not granted.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief as to the FIRST and SECOND CAUSES OF ACTION as follows:

- A. An order certifying that the action may be maintained as a Class Action;
- B. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein;
- C. An order requiring Defendants to pay restitution to Plaintiff and all members of the Class;
- D. For pre-judgment interest from the date of filing this suit;
- E. Reasonable attorneys' fees;
- F. Costs of this suit; and
- G. Such other and further relief as the Court may deem necessary or appropriate.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief as to the THIRD CAUSE OF ACTION as follows:

- A. An order certifying that the action may be maintained as a Class Action;
- B. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein;
- C. An order requiring Defendants to pay restitution to Plaintiff and all members of the Class;
- D. For an award of actual damages;
- E. For an award of punitive damages;
- F. For pre-judgment interest from the date of filing this suit;

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- 1 G. Reasonable attorneys' fees and costs of this suit;
2 H. Such other and further relief as the Court may deem necessary or
3 appropriate.
4 I. That each senior citizen and disabled person who is a plaintiff be
5 awarded \$5,000 as authorized by sections 1780(b) and 3345(b) of
6 the Civil Code; and,
7

8 DATED: May 4, 2010

MILSTEIN, ADELMAN & KREGER,
LLP

/s/ Wayne S. Kreger

Wayne S. Kreger (154759)
Sara D. Avila (263213)
Attorney for Plaintiffs

13 DATED: May 4, 2010

LAW OFFICES OF HOWARD WEIL
RUBINSTEIN

/s/ Howard W. Rubinstein

Howard W. Rubinstein (*pro hac vice*)
Attorney for Plaintiff

18 DATED: May 4, 2010

WHATLEY, DRAKE & KALLAS

/s/ Joe Whatley, Jr.

Joe Whatley, Jr. (*pro hac vice*)
Attorney for Plaintiff

23 **JURY TRIAL DEMANDED**

24 Plaintiff demands a jury trial on all triable issues.
25

26 DATED: May 4, 2010

MILSTEIN, ADELMAN & KREGER, LLP

27 By: _____
28 /s/ Wayne S. Kreger
Wayne S. Kreger (154759)
23

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1 Sara D. Avila (263213)

2 Attorneys for Plaintiffs

3
4 LAW OFFICE OF HOWARD WEIL
RUBINSTEIN

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6 By: /s/ Howard W. Rubinstein
Howard W. Rubinstein (*pro hac*)

7 Attorney for Plaintiffs

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10 WHATLEY, DRAKE KALLAS, LLP

11
12 By: /s/ Joe Whatley, Jr.
Joe Whatley, Jr. (*pro hac vice*)

13 Attorney for Plaintiffs